



United States  
Department of  
Agriculture

Agricultural  
Research  
Service

Office of  
Technology  
Transfer

mailing address:  
G. Byron Stover, Esq.  
Patent Advisor  
USDA-ARS-OTT  
5601 Sunnyside Ave.  
Room 4-1182  
Beltsville, MD 20705  
byron.stover@nps.ars.usda.gov

RECEIVED  
CENTRAL FAX CENTER

MAR 06 2006

## Fax Transmittal Sheet

**From:** G. Byron Stover, phone 301-504-4783, fax 301-504-5060  
**To:** Examiner S.E. Fernandez (Group 1651) Fax # (571) 273-8300  
**RE:** Serial No. 10/640,987  
**Date:** 6 March 2006 Pages: 3 including cover page

Enclosed is a response to an Office Action. Entry of said response is respectfully requested.

- [X] Reply To Requirement For Election Of Species (2 pages)
- [X] Certificate of Transmission (1 page)

### CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached Reply To Requirement For Election Of Species was this day, 6 March 2006, filed in the U.S. Patent and Trademark Office via facsimile to facsimile number 571-273-8300. Total pages: 3

G. Byron Stover

G. Byron Stover

### CONFIDENTIALITY

This facsimile message may contain information which is legally privileged and confidential. It is intended only for the use of the recipient named above. If you are not the intended recipient, we emphasize that any dissemination, distribution or copying of this document or its contents is strictly prohibited. If you have received this in error, please notify us immediately by telephone.

Atty. Dkt.  
0019.03

RECEIVED  
CENTRAL FAX CENTER  
MAR 06 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: David I. Shapiro-Ilan et al.

Serial No.: 10/640,987

Examiner: S.E. Fernandez

Filed: 14 August 2003

Group Art Unit: 1651

For: Methods And Materials For Control of Insects Such As Pecan Weevils

REPLY TO REQUIREMENT FOR ELECTION OF SPECIES

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

In complete response to the Office Action dated 22 February 2006, Applicants hereby elect for searching purposes only the species of *Metarhizium anisopliae* having the identifying characteristics of *Metarhizium anisopliae* NRRL 30594 in claims 1 and 6 and the species of pecan weevils in claim 11. Claims readable on the election of *Metarhizium anisopliae* having the identifying characteristics of *Metarhizium anisopliae* NRRL 30594 are claims 1, 3, 6, and 8. Claims readable on the election of pecan weevils are claims 10 (second occurrence) and 11-14.

It is respectfully pointed out that, according to MPEP Section 803, in order for a restriction requirement to be proper, two criteria must be met:

- (1) the inventions must be independent or distinct as claimed, and
- (2) there must be a serious burden on the examiner if restriction is not required.

In the instant application, it is believed that a search for a method for controlling insects utilizing an effective insect biopesticidal amount of the claimed composition where the insects are

pecan weevils would simultaneously encompass a search for any insect controlled by such a method. One of ordinary skill in the art would not limit the experiments to a particular insect but would try various insects and report this in any paper or patent application. Therefore, there would be no serious burden on the Examiner to search for the various insects since a search for one insect could be expected to be found in the same reference as that disclosing another insect.

For this reason, it is respectfully requested that the Examiner reconsider the restriction requirement and examine the invention comprising all species of insects.

In the event that there are any questions relating to the application in general, it is respectfully requested that the undersigned be contacted so that prosecution of this application can be expedited.

Respectfully submitted,

By: G. Byron Stover

G. Byron Stover  
PTO Reg. No. 34,737  
USDA-ARS-OTT  
5601 Sunnyside Ave.  
Room 4-1182  
Beltsville, MD 20705-5131  
Telephone: (301)504-4783

Date: 6 March 2006